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No. 25

In the Supreme Court of the United States

OCTOBER TERM, 1948

AYRSHIRE COLLIERIES CORPORATION, A CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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OPINIONS BELOW

The report of the Interstate Commerce Commission herein involved (R. 164) is reported in 263 I. C. C. 179. The memorandum opinion (unreported), findings of fact and conclusions of law of the District Court are set forth at R. 1721, 1725.

JURISDICTION

The final decree of the District Court (R. 1738) was entered November 28, 1947, and the appeal

was allowed January 21, 1948 (R. 1747). Probable jurisdiction was noted, March 29, 1948 (R. 1762). The Court's jurisdiction rests on the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219, 220; 28 U. S. C. 45 and 47a) and section 238 of the Judicial Code as amended by the Act of February 12, 1925 (c. 229, 43 Stat. 936, 938, par. (4), 28 U. S. C. 345).

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix.

QUESTIONS PRESENTED

In an Investigation and Suspension proceeding arising under section 15 (7) of the Interstate Commerce Act, the Commission had before it questions as to the lawfulness of adjustments, proposed by rail carriers, in the rates applying on coal from the mining groups in Indiana to Rockford, Freeport, Dixon and other destinations in northern Illinois and to Beloit, Wisconsin, located about 18 miles north of Rockford, Illinois.[1] A special feature of the proposed adjustments which the Commission considered would, if adopted, prevent the establishment of a sound

[1] At the same time the Commission had before it a proceeding instituted under section 13 (4), wherein it was alleged that the intrastate rates (imposed by State authority) applying from the Illinois groups to the northern Illinois destinations caused unjust discrimination against interstate commerce. The two proceedings were heard on a common record and were dealt with in one report.

and stable rate structure was that thereby what is known as a dual basis of rates would be continued in effect to the northern Illinois destinations and would also be inaugurated into the adjustment of rates to Beloit.[2] Based on evidence before it, the Commission found that such dual basis, as then in effect to the northern Illinois destinations and as proposed to be continued, resulted and would result in unjust discrimination and undue preference and prejudice in violation of sections 2 and 3 of the Act. And it also found that such dual basis of rates as proposed to be extended to Beloit would result in violations of those sections. The Commission further found that the existing and proposed rates to the northern Illinois destinations resulted and would result in undue preference and prejudice, violative of section 3, as between the respective Indiana groups, and that the proposed rates to Beloit would result in undue preference and prejudice, violative of section 3, as between the respective Indiana groups and as between the Indiana and Illinois groups.

[2] For some years the Milwaukee had maintained from mines on its lines in the Brazil and Linton groups, Ind., single-line rates to Rockford and other northern Illinois destinations at a level considerably lower than the joint-line rates, to many of which it was a party, applying from the other mines in those groups to the same destinations. By the schedules before the Commission, this adjustment—called a dual basis of rates—was proposed to be continued to the northern Illinois destinations and also extended to Beloit.

The Commission's sections 2 and 3 findings in each case stated that the violations specified would result to the extent that the rates reflected "rate relations * * * which differ from the relations reflected by the rates set forth as approved in appendices A and D to the report". In arriving at the approved rates, the Commission set out in detail the changes it made in the proposed rates together with its reasons therefor and the supporting evidence. Among other evidence establishing the lawfulness of the approved rates, the Commission made use of the so-called Indiana-Illinois distance scale and the Midland scale, described in the report, for purpose of comparing the approved rates from mine groups in Indiana with the approved rates from Illinois groups and also for purpose of showing that the approved rates were reasonable.

The questions presented are

1. Whether the Commission exceeded its authority by directing its findings and order to the existing as well as the proposed rates and rate relations.

2. Whether, since the Milwaukee republished (although without change) its single-line rates to Beloit as part of the proposed readjustment, the Commission was in error in treating those rates as in issue.

3. Whether, since the rates involved, including joint line rates in which the Milwaukee joined, were generally rates made pursuant to the group

gate principle whereby all origin points within a given producing area are treated as constituting one shipping point for purpose of the rate charged, the Commission was in error in finding that the dual basis of rates was violative of section 2 of the Act as well as section 3.

4. Whether the Commission's findings and the evidence before it were not ample to support its order.

5. Whether the Commission's order, the effect of which was to require and prescribe the establishment of the approved rates as the just, reasonable and nondiscriminatory rates to be thereafter observed, was subject to the rule applicable to orders made under section 3, that the carriers must be afforded alternative methods of removing unjust discrimination found by the Commission.

STATEMENT

This is a direct appeal from a final decree (R. 1735) of a specially constituted district court dismissing as without merit two complaints (consolidated for hearing), seeking the enjoining and setting aside of an order of the Interstate Commerce Commission entered in a proceeding entitled Investigation and Suspension Docket No. 5139, *Coal to Beloit, Wis.; and Northern Illinois.*[2]

[2] A previous decision and decree of the district court, June 5, 1946, sustaining the Commission's order as valid and dismissing the complaints, was reversed on appeal because, due to illness, one of the members of the three-judge court had not participated in the decision. *Ayrshire Collieries Corporation et al.* v. *United States*, 331 U. S. 132.

The appellants in one of the cases are certain companies and individuals engaged in mining coal in Indiana and the Coal Trade Association of Indiana, and the appellant in the other cause is the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

The Commission proceeding (R. 3), an I. & S. proceeding under section 15 (7) of the Interstate Commerce Act, was instituted July 30, 1942, on protest, or complaint, of Indiana coal-shipping interests asking for investigation of the lawfulness of rates, proposed by certain railroads, on bituminous coal, in carloads, from mines in Indiana to Beloit, Wis., and certain northern Illinois destinations, and from mines in western Kentucky to the Illinois destinations. The rates proposed were suspended by the Commission for the statutory period and thereafter by the railroads voluntarily until disposition of the proceeding. The I. & S. proceeding (R. 4) was heard together with a proceeding under section 13 (3) and (4) of the Act, No. 28881, *Bituminous Coal Rates Within Illinois,* which was instituted upon petition of the principal railroads operating in Illinois wherein they alleged that the intrastate rates on bituminous coal, in carloads, from mines in Illinois to the same northern Illinois destinations caused undue preference and prejudice as between persons and localities in intrastate commerce on the one hand, and interstate commerce on the other, and unjust discrimination against

interstate commerce. The two proceedings and related proceedings of the Illinois Commission (R. 166) were heard under the cooperative plan agreed upon between the Commission and the various State commissions. In accordance therewith, representatives of the Illinois Commission sat with the Commission's examiner at the hearings and two members of that Commission joined the members of the Interstate Commerce Commission in hearing the oral argument. Numerous traffic bureaus, coal producers, chambers of commerce, and shipper associations were represented at the hearings (R. 166).

The Commission report, issued July 9, 1945 (R. 164) embraced its determinations and findings in both I. & S. No. 5139 and in No. 28881. Its order entered in the I. & S. proceeding (R. 222) required the respondent railroads to cancel their schedules of proposed rates, without prejudice to the establishment of rates on the bases approved in the report, and further that they desist from practicing the unjust discrimination and undue prejudice and preference found in the report to exist and publish, maintain and apply rates which will avoid and remove such unjust discrimination and undue prejudice and preference. The order entered in No. 28881, though not under attack, is closely related to the order in I. & S. No. 5139. It required the railroads, respondents in that proceeding, to desist from practicing the unjust discrimination against inter-

state commerce found in the report to exist and to establish, maintain and apply, for the intrastate transportation of coal involved, rates no lower than the approved rates or on the rate bases as indicated in said report.

Bituminous coal is produced in great quantities in the coal fields of Indiana, Illinois, and western Kentucky, collectively, known as the midwestern field, and a natural market for the production is the section of the country north and west thereof, including Illinois, Wisconsin and Iowa. In each of the origin states of Indiana and Illinois there are several producing areas which have long been grouped for rate-making purposes. In Indiana, the most northerly is the group known as Brazil-Clinton (hereinafter called the Brazil). The Indiana groups south thereof are, in the order of their distances, the Linton-Sullivan (hereinafter called the Linton), the Princeton-Ayrshire (hereinafter called the Princeton), and the Boonville group, located near the southern boundary of the state. In Illinois, the most northerly mine group is that known as the Northern Illinois. The Illinois groups south of the Northern Illinois group are, among others, the Fulton-Peoria, the Springfield, the Belleville, and the Southern Illinois, the latter group being located in the southeastern part of the state and not far from Kentucky and southwestern Indiana. In Kentucky, the mine group known as the Western Kentucky lies east and in

part south of the Southern Illinois group and just south of the Boonville group in Indiana.

In the fixing and adjustment of rates on coal and building of coal rate structures, a pronounced characteristic has been the establishment of "group rates" whereby all mines within a particular area—often large in extent—are accorded the same rates to the same consuming destinations. While, due to differences in location in an origin area, such grouping of mines for rate purposes at times entails a considerable disregard of comparative distances, its justification is, similarly as in cases of other groupings applying to "areas containing natural resources," that it operates to encourage competitive production,[4] thus stimulating a more even development of the area and fuller production, all in the interest of consumers,[5] the traffic of the railroads[6] and of the producers in an origin group area generally.[7] Along with the group method of making rates, another marked characteristic of coal rate structures has been that of rate differentials, that is,

[4] *In re Transportation of Wool, etc.*, 23 I. C. C. 151, 164; *Waukesha Lime & Stone Co.* v. *C. M. & St. P. Ry.*, 26 I. C. C. 515, 518; *Public Utilities Comm. of Idaho* v. *O. S. L. R. R. Co.*, 33 I. C. C. 103, 106.

[5] *Wisconsin and Arkansas Lumber Co.* v. *St. L., I. M. & S. Ry. Co.*, 33 I. C. C. 33, 37; *Hitchman Coal & Coke Co.* v. *B. & O. R. R. Co.*, 16 I. C. C. 512, 520; *Southwestern Coal Operators' Asso.* v. *A. W. Ry. Co.*, 89 I. C. C. 73, 85.

[6] *Chemical Lime Co.* v. *Bellefonte Cent. R. R. Co. et al.*, 136 I. C. C. 333, 341.

[7] *New York Harbor Case*, 47 I. C. C. 643, 712; cf. generally *Illinois Commerce Comm.* v. *United States*, 292 U. S. 474, 486, and cases cited.

differences in the rates applying from the respective origin groups in the adjustment. These differentials are usually constructed with reference to a particular base group.[8]

As involved in the Commission's interstate rate proceeding, I. & S. No. 5139,[9] the origin mine groups are, so far as requiring specific mention, the groups above referred to in Indiana, Illinois, and western Kentucky and the destinations of the traffic are Rockford, Freeport, Dixon, and other points in northern Illinois and Beloit, Wisconsin, about 18 miles north of Rockford. The Brazil is the base group in Indiana on coal traffic to those destinations and to points in the north and northwest generally. From the other Indiana groups the rates, expressed in cents per net ton, are made certain differentials higher than those from the Brazil group. In Illinois, the Springfield group is the largest in area and the southern Illinois group the largest in production. Formerly the latter was regarded as the base Illinois group, but, in recent decisions, the Commission has used the Fulton-Peoria group, which lies in northwestern Illinois and has materially increased its production, as the base group from Illinois mines to all points in Iowa and to certain points in

[8] Cf. *Ohio* v. *United States*, 292 U. S. 498, 502.

[9] Although the I. & S. proceeding and the intrastate proceeding, No. 28881, are dealt with and decided under separate headings in the report, the issues in the two proceedings are so closely related that the discussion of rates and differentials is necessarily overlapping.

southern Wisconsin (R. 170). To destinations in the north and northwest, the rates from the Fulton-Peoria group in Illinois are generally 30 or 35 cents under those from the Springfield group and 60 or 70 cents under those from the southern Illinois group "with varying differentials between the other Illinois groups" (R. 170). "Rates from the respective Indiana groups [Brazil, Linton, Princeton, and Boonville groups] 30, 20, 13, and 10 cents under southern Illinois to the Northwest, that is, northeastern Iowa, southeastern Minnesota, and southern Wisconsin, including Beloit, were approved in 1934 in *Illinois Coal Traffic Bureau* v. *Ahnapee & W. Ry. Co.*, 204 I. C. C. 225, and those differences, referred to by the Indiana shippers as the standard differentials, still prevail to practically all of that area" (R. 170).

For some years prior to 1930, the differences, or differentials, in rates from the several Indiana groups under those from southern Illinois, which, as above stated, were approved by the Commission, and still apply, on traffic to destinations in the regions specified, including Beloit, Wisconsin, applied also on traffic to most of the northern Illinois destinations (R. 176). This, however, was not true as to the particular destinations of Rockford, Freeport and Dixon, the principal coal consuming points in the northern Illinois destination territory involved. In the adjustments of rates to those destinations prior to 1930 as well

as subsequently, no settled differentials had been observed. Taking Rockford as illustrative, during a 15-year period prior to 1925, the group differentials were frequently changed and in no case corresponding to the so-called standard differentials; and in July of that year, as the result of an adjustment by the railroads, the rates to that destination from the respective Indiana groups (Brazil, Linton, Princeton and Boonville) were made 30, 25, 18, and 15 cents under the rates from the southern Illinois group to the same point. In 1930, the Illinois Commission ordered reductions in the intrastate rates on coal to the destinations above named and certain others in northern Illinois, including a reduction from the southern Illinois group to Rockford of 17 cents. As a result of the latter reduction on traffic to Rockford the differences in the rates from the three most northern Indiana groups under those from the southern Illinois group were changed to 13 cents from Brazil, 8 cents from Linton, and 1 cent from Princeton, and the rates from the Boonville group became 2 cents over those from the southern Illinois group (R. 176).

In addition to effecting the changes above indicated in the rate relations of the Indiana and Illinois mine groups as origin groups producing and shipping coal to Rockford and the other destinations, the State Commission's order brought about substantial changes in the rate relations of Rockford and the other northern Illinois points,

on the one hand, and Beloit, Wis., on the other as consignee and consumer destinations of the traffic. Again taking Rockford as illustrative, under the State Commission's order, the rate from the southern Illinois group to that destination was reduced "from $2.17 to $2.00, or 75 cents less than the rate from the same group to Beloit, 18 miles north of Rockford, and the rate from the Fulton-Peoria group to Rockford became 42 cents less than that to Beloit" (R. 167).

Following the reduction in intrastate rates pursuant to the Illinois Commission's order, the Interstate Commerce Commission, on petition of railroads operating in Illinois, instituted, under section 13 (3) and (4) of the Act, an investigation of the lawfulness of the intrastate rates so reduced and established. In its report in that proceeding, *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537, the Commission, in dealing with the rates from the Illinois groups to the northern Illinois destinations, found (p. 549) that they were "well below the reasonable level of rates in this territory", but since it considered that the interstate rates from the Indiana groups to the same destinations were also below that level, it declined to order an increase in the Illinois intrastate rates unless and until the interstate rates from Indiana were raised to a level more nearly commensurate with the general level of rates in the territory (R. 168, 176).

Subsequently, in a complaint case involving the rates from Indiana, Illinois and western Kentucky to Beloit, Wis., (just north of Rockford), Division 2 of the Commission found that the rates were not unreasonable, that is, not excessive, but that they were unduly prejudicial to Beloit and preferential of Rockford to the extent they exceeded the rates from the same origins to Rockford by more than 25 cents. *Fairbanks, Morse & Co.* v. *Alton & S. R.*, 195 I. C. C. 365 (R. 167). The accompanying order for removal of the discrimination permitted compliance by the railroads, not only by reducing the rates to Beloit, but by the alternative method of increasing the rates from the same origins to Rockford; and, judged by the Commission's findings in *Intrastate Rates on Bituminous Coal, supra,* the latter rates were at a level well warranting an increase. However, the rates from the Illinois groups to Rockford—the intrastate rates—could not be increased because they had been prescribed as maxima by the Illinois Commission; and, to have increased the rates from the Indiana groups to Rockford without similar increases from Illinois, would have been unwarranted. Accordingly, compliance was made with the order by reducing the rates to Beloit (R. 168). On further hearing, 251 I. C. C. 181, the Commission affirmed generally its findings that the rates involved were unduly prejudicial to Beloit and preferential of Rockford but it changed the relation prescribed from 25

to 15 cents, by finding that the discrimination shown existed to the extent that the rates to Beloit exceeded the Rockford rates by more than 15 cents (R. 168).

The Commission proceeding herein involved, I. & S. No. 5139, had its inception in the above findings and accompanying order on rehearing in the *Fairbanks-Morse case, supra.* Since the railroads had, as above stated, complied with the first order in the case by a reduction in the rates to Beloit, and one observing the 25-cent relation, and, since they considered that the rates, as generally involved, that is, the rates, not only to Beloit, but to Rockford and nearby related destinations in northern Illinois, were all at a level considerably below the general level of rates in the territory, their schedules, filed and suspended in I. & S. No. 5139, proposed increases generally in the rates to those destinations which, while conforming to the 15-cent relation prescribed, would at the same time place the rates as a whole on a level more nearly commensurate with the general level of interstate rates in midwestern territory (R. 168, 175).[10]

[10] In a proceeding decided shortly before its decision on rehearing in the *Fairbanks-Morse case, supra*, the Commission approved increases in the rates on coal from Indiana and western Kentucky to the northern Illinois points which, with certain exceptions, were substantially the same as the rate increases proposed in I. & S. No. 5139. *Coal to Illinois and Wisconsin*, 232 I. C. C. 151. A similar revision was proposed by the railroads at that time in the intrastate rates from the

The rate increases proposed ranged in amounts from 5 to 17 cents from the Indiana groups and approximately the same from the Illinois groups [11] to Rockford and the other destinations in northern Illinois. To Beloit, Wis., no increase was proposed in the rates from mines on the Milwaukee and certain other carriers serving the Indiana groups. With that exception the rates to Beloit from the Indiana mines were proposed to be increased by 17 cents from the Brazil group and 12 cents from the Linton and Princeton groups. No change was proposed in the rates from the Illinois groups to Beloit [12] (R. 171).

Illinois groups to northern Illinois destinations, which, however, was found unjustified by the Illinois Commission. Because of the maladjustment that would result, the railroads were unwilling to make effective the interstate rates proposed and approved without making effective the revision in intrastate rates proposed, and, accordingly, they petitioned the Interstate Commission to enter upon an investigation under section 13 (4) of the Act of the unlawfulness of the intrastate rates from the Illinois origins to the northern Illinois destinations. The Commission instituted the investigation, but later, upon request of the railroads, discontinued the proceeding and, by special permission authorized cancellation of the schedules proposed in *Coal to Illinois and Wisconsin, supra.*

[11] Increases in the Illinois intrastate rates to a level commensurate with the reasonable interstate level in midwestern territory were sought and authorized (R. 198) in No. 28881, together with I. & S. 5139, and decided in the same report.

[12] In Appendix A to the Commission's report (R. 213), the existing and proposed rates from the Indiana and Illinois groups to Beloit and 12 representative destinations in northern Illinois are shown together with the rates to most of those points approved in *Coal to Illinois and Wisconsin, supra.*

The rate revision proposed by the railroads was, however, "greatly complicated by the insistence of the Milwaukee upon a so-called dual basis of rates from the Brazil and Linton groups, which under the proposal would be extended also to the Princeton group on traffic to Beloit" (R. 170).

Following the 1930 reduction in Illinois intrastate rates and the railroads' failure, in *Intrastate Rates on Bituminous Coal, supra,* to bring about the reestablishment of the former intrastate rates on coal to the Northern Illinois destinations, the Milwaukee, which serves only the Brazil and Linton groups and only certain mines in those groups, proposed to reduce by 17 cents its single-line rates from those mines to Rockford and Freeport and certain intermediate points in northern Illinois. The Commission, in *Coal from Indiana to Illinois,* 197 I. C. C. 245, 200 I. C. C. 609, found the proposed adjustment unjustified and ordered its cancellation. In *United States v. Chicago, M., St. P. & P. R. Co.,* 294 U. S. 499, this court held that the order was invalid for the reason, *inter alia,* that it was not supported by adequate findings; and the proposed rates became effective in 1934 (R. 177).

In 1936 the Milwaukee increased its single-line rates from the Linton group to Rockford and Freeport by 5 cents, so as to make the differential Linton over Brazil on its line 10 cents. Subsequently, the Illinois Central met the Milwaukee's action by making like reductions in its single-

line rates from the mines on its line in the Linton group to Rockford, Freeport and other destinations in northern Illinois (R. 177). Of the 30 mines comprising the Brazil group 4 are on the line of the Milwaukee, and of the 31 mines comprising the Linton group 9 are on the line of the Milwaukee and 4 on the line of the Illinois Central. But, while these two railroads do not, as origin carriers, serve the other mines in the Brazil and Linton groups, in connection with such of the traffic from those mines as moves to the consuming area here involved, they figure importantly as destination carriers and as parties to many joint rates (R. 180, 181). Nevertheless, the reductions made by the Milwaukee and Illinois Central in the rates applying from mines on their lines were not accorded to the other mines in the two groups but, on the contrary, the rates from the latter to the destinations in northern Illinois were continued and maintained at the much higher level.[13] And, since the rate increases to those destinations, proposed by the tariff schedules before the Commission in I. & S. No. 5139, were generally the same in amounts from all of the mines in the two groups, including those on the lines of the Milwaukee and Illinois Central, the dual basis of rates, as then in effect, was, by

[13] Except that from certain mines in the Brazil and Linton groups to a few destinations in northern Illinois the rates were still higher than the group rates. This was also true of the rates from certain mines in the Princeton group to Forreston, Ill. (R. 182).

such schedules, proposed to be continued (R. 182).

To Beloit, Wis., the existing rates from all the mines in the Brazil and Linton groups were the same, but by the tariff schedules before the Commission in I. & S. No. 5139, the proposed dual basis of rates to Rockford and the other northern Illinois destinations reached by the Milwaukee was proposed to be extended to Beloit also. Since in connection with the rate increases proposed it was necessary to observe the 15-cent maximum spread, or relation, Beloit over Rockford, prescribed in the *Fairbanks-Morse case, supra,* the schedules of proposed rates were adjusted so as in all cases to conform to that requirement. But, while, on the one hand, the adjustment as worked out for the Brazil and Linton groups, as such resulted in substantial increases in the joint-line rates [14] to Beloit as well as those to Rockford, on

[14] Seven railroads serve the Brazil group and six serve the Linton group, but of those originating carriers, none, except the Milwaukee and Illinois Central, reaches with its own lines Rockford or other of the northern Illinois destinations, and none, except the Milwaukee, reaches Beloit. Consequently, save for the rates over the single-line routes of the Milwaukee and Illinois Central (which latter serves the Linton group only) the rates from the two mine groups were rates over joint-line routes. Of the 12 representative destinations in northern Illinois, the Milwaukee reached 5 and the Illinois Central 4 and those carriers were parties to the said joint-line routes and rates, existing and proposed, to the destinations on their respective lines. From the mines in the groups other than those from which its single-line rates apply to Beloit, the Milwaukee was party to the joint-line routes and rates, existing and proposed, to that destination (R. 177, 180, 181).

the other hand, in the case of the Milwaukee's single-line rates from the Brazil and Linton mines on its line, the requirement of observing the 15-cent relation was met by a proposal to increase by 15 cents the rates to Rockford without any increase in the rates to Beloit. Under the Milwaukee's existing adjustment of single-line rates from the latter mines, the rates to Rockford, as reduced by that carrier below the joint-line rates, were 30 cents lower than its rates to Beloit, and, accordingly, since its proposal was to increase the Rockford rates by 15 cents only, this permitted no increase in the Beloit rates if the 15-cent maximum-spread, Beloit over Rockford, was to be observed (R. 177, 181). The net result, however, was that it was proposed to accord the Brazil and Linton mines on the line of the Milwaukee rates lower to Beloit by 17 and 12 cents, respectively, than accorded to the other mines in the two groups (R. 180, 181).

By the tariff schedules before the Commission, it was also proposed to establish a dual basis of rates to Beloit from the Princeton group. The joint-line rate to Beloit was to be increased 12 cents but with the exception that from mines on the Southern and the Algers, Winslow & Western no increase was to be made. As for the Boonville group, which was served by the Southern only and which the Commission concluded should be combined with the Princeton group (R. 171,

178), no increase in the rates from the mines therein to Beloit was proposed (R. 171).

After setting out in its report the facts in respect of the railroad's proposal to continue the dual basis of rates from the Brazil and Linton groups to northern Illinois destinations and to extend such basis also to the rates applying from Beloit, Wis., not only from those two groups but from all Indiana groups, the Commission discussed the evidence bearing on the propriety of the proposal and found, among other things, that there was no warrant therefor either as based on differences in distances or in transportation conditions (R. 183); that the respondents appeared to be agreed that, given a fair relation between the respective origin groups, a single rate basis was much to be preferred to any multiple basis; that "normally, coal sales turn on a price difference of as little as a few cents a ton"; and that plainly, therefore, only by the "maintenance of a single rate basis from each of these coal-rate districts can unjust discrimination and undue prejudice be avoided" (R. 183).

Proceeding to the question of the fairness and reasonableness of the rate relations between the respective origin groups that would be established under the revision of rates proposed, the Commission first found that the operating conditions from the respective Indiana and Illinois groups to the northern Illinois destinations were in gen-

eral substantially similar (R. 185), and, thereafter, it gave consideration to statistics of record showing the tonnages produced and moved from the respective mine groups during the years 1923 and 1936 (generally regarded as approximating normal) as compared with those during the year 1941, the latter period being the latest for which fairly complete tonnage results were of record. The statistics also made like comparisons with respect to the Illinois and Indiana mines as a whole. Generally stated, it appeared that to Beloit and the principal coal consuming destinations in northern Illinois, the shipments from the Indiana mines in 1941 showed an increase over the year 1936 considerably greater than that shown for the Illinois mines. In the matter of maintaining the total of all tonnage produced and shipped at or near the level of former years, the showing for the Indiana mines was also more favorable. But, while this was true for the Indiana mines as a whole, the total tonnage shipped from the Brazil group showed a sharp decrease. The Linton group had, in comparison with Brazil and also with the Springfield and southern Illinois groups, maintained its tonnage produced and shipped at a quite high level. The Princeton group had considerably increased its total tonnage of coal produced and shipped (R. 185–187).

Based in part on the statistics of production and tonnage shipped and in part on a comparison of the average distances and average rates from

Brazil, on the one hand, and Linton, on the other, to Beloit and to the 12 representative northern Illinois destinations, the Commission concluded that the rate differential, Brazil under Linton, existing and proposed, was too small and should be increased to 10 cents. Thereafter, the Commission said (R. 187):

> If the proposed rates from the Indiana groups which are higher than the so-called normal basis [15] were reduced to the latter basis, and if the single-line rates of the Milwaukee and the Illinois Central from the Linton district were increased to the normal basis proposed from the other mines in that group, the rates from all of the Brazil mines made 10 cents less [than from Linton], and the Princeton-Boonville rates made 7 cents more, the resulting rates to the 12 destinations would average $1.95 from Brazil, $2.05 from Linton, and $2.12 from Princeton-Boonville. Such rates, referred to hereinafter as approved rates, compare favorably with the proposed rates from the Illinois groups to the same destinations, with the exception of certain of the rates from the Fulton-Peoria, Danville, and Du Quoin groups.[16]

[15] From certain mines in the Indiana groups to a few destinations in Northern Illinois the rates were higher than the group rates. In those few instances the proposed rates were also higher than the group rates proposed (R. 182).

[16] Certain of the proposed intrastate rates from mines in the Fulton-Peoria, Danville, and Du Quoin groups in Illinois were badly aligned. To correct those situations the Commission prescribed the adjustments that would result in lawful

In addition to the support afforded by the statistics of production and tonnage shipped from the respective mine groups and the reasons it gave for increasing to 10 cents the differential between the Brazil *base group* and the Linton group, the Commission, in determining upon the "approved rates" to the 12 representative northern Illinois destinations, applied, as tests of their justness and reasonableness, the distance scales of rates known as the Indiana-Illinois scale and the Midland scale,[17] already described in its report and approved for use in the proceeding (R. 172). The Commission's application of the distance scales to the approved rate from Brazil is generally illustrative of the use made of the scales. In connection therewith it said (R. 189):

> The average approved rate of $1.95 from Brazil to the 12 destinations for 256 miles is 88.6 percent of the Indiana-Illinois scale and 76.5 percent of the Midland scale, which compares favorably with the foregoing average approved rate from the Danville group, with the average proposed rate of $1.83 to the same destinations from Springfield for 225 miles, 91.5 and 75.6 percent of the respective scales, and with the average proposed base rate of $1.59

rates under section 13 (4) of the Act. In the cases of the Danville and Du Quoin groups, the adjustments found necessary resulted in the prescription of the group rates to apply therefrom (R. 188, 189).

[17] The distance scales are set out in Appendix C to the report (R. 219).

> from Fulton-Peoria for 159 miles, 93.5 and 84.6 percent of the scales. The average rate of $2.12 approved from the Princeton-Boonville group for 366 miles is 83.5 and 67.9 percent of the respective scales, as compared with an average proposed rate of $2.14 for 354 miles from southern Illinois, 84.3 and 68.6 percent of the scales.

Applying the test of the distance scales to the approved rates from the Indiana-Illinois mines as a whole, the Commission said (R. 191):

> Taken as a whole, the combined rates herein approved from Indiana to the 12 northern Illinois destinations average 86.1 percent of the Indiana-Illinois scale and 70.7 percent of the Midland scale and the combined rates herein approved from the Illinois groups to those destinations average 85.4 and 70.3 percent of those scales. We believe that the rates or rate bases above indicated, which are set forth more specifically in appendices A and D hereto, will afford fair and reasonable relations of rates to northern Illinois destinations, both as between the respective origin groups and as between the Indiana groups on the one hand, and the Illinois groups on the other.

In connection with its determination and approval of rates from the Indiana groups to Beloit, Wis., the Commission made the same application and use of the distance scales as tests of the justness and reasonableness of the rates approved

(R. 193). While the approved rates to Beloit were on a somewhat higher level than those approved to northern Illinois destinations, they conformed to (R. 193) the 15-cent maximum spread, Beloit over Rockford, above referred to, and, moreover, Beloit was somewhat more distant and was a marginal point, that is, "located at the edge of a territory which, because of less favorable transportation conditions, properly takes somewhat higher rates than does northern Illinois" (R. 192).

In passing upon the proposed rates from the Western Kentucky group to the 12 representative destinations in northern Illinois, the Commission found that, to 6 of the destinations the rates proposed were unjustified. The 6 destinations were points intermediate to Chicago and the rates thereto were to be increased to the Chicago basis of $2.40. Such basis would have made the western Kentucky rates to the 6 destinations 35 cents over the southern Illinois rates to the same points, whereas the Commission concluded that the differential should not exceed 25 cents. The proposed rates to the other Illinois destinations were found justified (R. 195–196).

As above stated, the Commission's order in No. 28881, *Bituminous Coal Rates Within Illinois*, although not under attack, is closely related to the order in I. & S. No. 5139. Broadly described, the relief sought by the railroads in that proceeding and granted by the Commission was an au-

thorization of increases in the Illinois intrastate rates involved in the adjustment to a level more nearly commensurate with the maximum interstate level approved by the Commission as reasonable for midwestern territory (R. 198). The intrastate rates were assailed as discriminatorily low and unlawful, not as related to the interstate rates from Indiana (which were also relatively low), but as related to the interstate rates in effect from the Illinois origins to destinations in eastern Iowa and southern Wisconsin (R. 203). The Commission found substantiallly that the Illinois intrastate rates caused undue and unjust discrimination against interstate commerce and that the unlawfulness should be removed by increasing the rates to the approved bases indicated in the report, including appendixes A and D (R. 211).

Near the end of its report the Commission summarized its findings of fact (R. 205) and thereafter set forth its conclusions (R. 210), the first three of which, it is believed, contain all that is essential for present purposes. These were that—

> 1. The present and the proposed rates from Indiana to the northern Illinois destinations, as published in the tariffs enumerated in appendix E to this report, result or would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or the Illinois Central railroads, in violation of section 2 of the act, and in

undue preference and prejudice as between the origins in the Brazil and Linton districts, and as between the respective Indiana districts, in violation of section 3 (1) of the act, in and to the extent that such rates reflect or would reflect rate relations between such districts and between the points in each of those districts to the respective destinations which differ from the relations reflected by the rates and the rate bases set forth as approved in this report, including appendices A and D hereto.

2. The proposed rates from the Brazil, Linton, and Princeton districts in Indiana to Beloit, as published in tariffs named in appendix E, would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee, in violation of section 2 of the act, and in undue preference and prejudice as between (a) the origins in the respective Brazil and Linton districts, (b) the respective Indiana districts, and (c) the Indiana districts on the one hand, and the Illinois districts on the other, in violations of section 3 (1) of the act, in and to the extent that such rates would reflect rate relations between such districts and the respective points in each of such districts to Beloit, which differ from the relations reflected by the rates set forth as approved in appendices A and D to this report.

3. The proposed rates from the Indiana districts to the northern Illinois destinations and to Beloit would be unreasonable to the extent that they would exceed the rates or rate bases set forth in the column headed "Rate approved in this proceeding" in appendix A to this report.

Following the issuance and entry by the Commission of its report and orders of July 9, 1945, petitions for reopening, rehearing, and reconsideration were filed by the Milwaukee, the Coal Trade Association of Indiana, and certain other parties (R. 126). These petitions were denied by the Commission, November 13, 1945.

PROCEEDINGS IN THE DISTRICT COURT

The complaint of the Ayrshire Collieries Corporation et al., was filed December 21, 1945 (R. 1), and that of the Milwaukee December 27, 1945 (R. 41). Answers were filed by the United States, by the Commission as intervenor, by various intervening railroads and by intervening Illinois coal traffic bureaus and interests (R. 55). By order of the court the complaints were consolidated for all purposes (R. 54), and, on April 22, 1946, the consolidated causes were heard before a specially constituted court of three judges, consisting of Circuit Judges Evans and Major, and District Judge Igoe (R. 52). On June 5, 1946, findings of fact, conclusions of law and judgment were filed and entered, sustaining the

Commission's order in all respects and dismissing the complaints. However, such disposition of the causes was determined upon and taken by two members of the court only, Circuit Judge Evans not having participated therein because of illness (R. 108, 111); and, upon the appeal therefrom, this Court ordered the judgment vacated, holding that, since "only two of the three judges [had] participated in the determination of the case," the judgment "was void and without statutory authority." *Ayrshire Collieries Corporation, et al. v. United States,* 331 U. S. 132, 135, 144.

On the return of the causes to the District Court, they were again fully heard by a court consisting of Circuit Judge Evans and District Judges Lindley and Baltzell. On November 28, 1947, the Court filed and entered its memorandum opinion, findings of fact, conclusions of law and judgment, sustaining the Commission's order as in all respects lawful and valid and dismissing the complaints (R. 1721–1738).

SUMMARY OF ARGUMENT

I

There is no merit to appellants' contention that, in an Investigation and Suspension proceeding based on tariff schedules, proposing changes in existing rates, the Commission's only authority is to pass upon the lawfulness of the proposed rates. The Commission has ample authority to look into the lawfulness of the present, as well as the pro-

posed, rates and to take such action as may be called for by its findings.

In an I. & S. proceeding under section 15 (7) of the Act the Commission is empowered to "make such order with reference thereto [proposed new rate or practice affecting any rate] as would be proper in a proceeding initiated after it had become effective." Section 15 (1) provides that where the Commission, after hearing, shall be of the opinion that any existing rate or practice is in violation of any of the provisions of the Act, it is authorized to prescribe what will be the lawful rate or practice, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist. *Akron, C. & Y. Ry. Co.* v. *United States,* 22 F. (2d) 199, 203 (W. D. N. Y.).

The construction given section 15 (7) from the beginning establishes as entirely within the Commission's authority its findings in the instant case that the existing as well as the proposed rates were unlawful and its order prescribing the rates to cure the unlawfulness. *Advances in Rates—Western Case,* 20 I. C. C. 307, 314; *Sioux City Terminal Ry. Switching,* 241 I. C. C. 53, 73–74; *Akron, C. & Y. Ry. Co.* v. *United States,* 22 F. (2d) 199, 203.

The appellants, in contrast to their contentions here, recognized throughout the Commission proceedings that the existing rates were in issue.

This is shown in the petition for suspension of the proposed rates filed on behalf of its members by the Coal Trade Association of Indiana (R. 132), in the testimony of its witness Scott (R. 1060) and in its exceptions to the Examiner's proposed report (pp. 17, 111, 112).

Appellant Ayrshire Collieries' contentions include assertions to the effect that, so far as the rates to Beloit are concerned; the Milwaukee's single-line rates from mines on its lines in the Brazil and Linton groups to Beloit were not put in issue at all by the proposed adjustment to Beloit; that the Milwaukee had not proposed any increase in its single-line rates to Beloit; and, therefore, that the Commission, in dealing with those rates, was assuming to deal with rates entirely outside the issues in the case and, thus, beyond its authority.

Although, in connection with the increase proposed by the carriers, including the Milwaukee, in the joint-line rates from the other mines in the Brazil and Linton groups to Beloit, the Milwaukee had not proposed to make like, or any, increase in its single-line rates, nevertheless, along with the general readjustment in rates to Beloit proposed, the Milwaukee republished its existing single-line rates to Beloit; and the said republished rates were included among the proposed rates which the Commission, by order, suspended and made subject to the investigation. Moreover, although literally speaking the Milwaukee, by

republishing its existing single-line rates from the mines on its lines to Beloit was not proposing "new" rates, still it was proposing not to increase those rates while, at the same time, joining in the proposal to increase the joint-line rates (to many of which it was a party) from the other mines in the groups to Beloit; and, therefore, it was proposing a "new practice affecting" the rates to Beloit. For, under the existing adjustment of rates from the Indiana groups to Beloit, the group basis of rates was being maintained—all mines in the same rate group paying the same rates to Beloit.

II

While appellants' briefs repeatedly assert that the Commission's conclusions and order are without support of adequate findings and evidence, their specific contentions as to such inadequacy narrow down to a few. Referring to the Commission's conclusions that the existing and proposed dual basis of rates (the adjustment whereby mines on the Milwaukee and Illinois Central enjoyed rates much lower than those accorded other mines) applying from the Brazil and Linton groups was unjustly discriminatory in violation of section 2, it is contended that the unjust discrimination in rates prohibited by that section applies only as to shipments moving from the same origins over the same line or route to the same destination, citing in support certain decisions of the Commission.

But the rates before the Commission were rates made pursuant to the "group rate" method, whereunder it is contemplated that all origin points within a given producing area, often extensive in size, shall, for purpose of the rate charged, be treated as constituting one shipping point. *Ohio* v. *United States*, 292 U. S. 498, 502. Such origin points, so treated as a single shipping point, are in fact usually widely dispersed and, in consequence, are usually served by a group of carriers rather than by the same line or route. So that, if appellants' contention that section 2's prohibition relates only to shipments moving from an identical origin over the same line or route were accepted as sound for application here, the result, it is apparent, would be to read that section out of the Act in respect of many situations as to which there is no good reason to believe it is not intended to apply. Section 2's prohibition against unjust discrimination in rates is not in terms limited to instances involving shipments moving from an identical origin over the same line or route, and it is believed that the provisions of that and other sections of the Act are intended to be given a workable construction.

As for the support afforded the Commission's order by its conclusions that the dual basis of rates and other adjustments, existing and proposed, were unduly preferential and prejudicial in violation of section 3, the appellants, similarly

contend that the conclusions lack the support of adequate findings and evidence. For the most part, however, the contentions are general or amount to mere assertions, disputed on the face of the Commission's report. A principal contention appears to be that, to support a conclusion of section 3 violation, there must be findings and evidence establishing specific injury.

The Commission's report finds that transportation conditions over the single-line routes do not differ materially from those over the joint-line routes; that "there is no important difference in the average distances over those respective routes"; that "normally coal sales turn on a price difference of as little as a few cents a ton"; and that "Under the circumstances recited, an extensive showing of injury through the loss of tonnage to particular coal shippers or consumers by reason of the discriminatory rates here before us is not required. *United States* v. *Trucking Co.*, 310 U. S. 344." Accord: *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 45–47.

Appellants challenge the differentials prescribed by the Commission as fair and reasonable as between the Indiana and Illinois groups, contending in effect that the Milwaukee's single-line rates from mines on its lines in Indiana were the rates which were properly related to the rates from the Illinois groups.

But, as above shown (pp. 20–21), it appeared from exhibits of production and tonnage shipped that, to the principal coal consuming destinations

in northern Illinois, the shipments from the Indiana mines in 1941 showed an increase over the year 1936 much greater than that shown for the Illinois mines. Furthermore, the fact that the Milwaukee and Illinois Central had by their reductions in single-line rates from Indiana mines met the reductions in Illinois intrastate rates previously made pursuant to the State Commission's order does not establish that such single-line rates are properly related to the rates from the Illinois groups. As found by the Commission (R. 176), while "for some years prior to 1930 the so-called standard differentials applied to most of those northern Illinois destinations, there appears to have been then, as now, no fixed relation either between the Indiana groups or between those groups and southern Illinois or Springfield to Rockford, Freeport, and Dixon, the principal coal-consuming points in this destination territory." Moreover in 1925, the railroads "voluntarily reduced the rates from the respective Indiana groups to Rockford by 5, 6, 8 and 28 cents, and made no reductions in the rates from any of the Illinois groups" (R. 176). There followed in 1930 the order of the Illinois Commission requiring the reductions in Illinois intrastate rates (R. 177).

III

Appellants' contention that the Commission's order was beyond its authority because not afford-

ing the carriers alternative methods of removing the discrimination and because all rates involved in the discrimination were not controlled by the same carriers is unsound.

The order is not, as in effect asserted, merely an order under section 3, that is, merely an order requiring removal of the unjust discrimination found. It is inescapably an order issued pursuant to section 15 (1), determining and prescribing the just and reasonable future rates. Although, where an order is made under section 3 an alternative must be afforded, permitting the carriers to "abate the discrimination by raising one rate, lowering the other, or altering both," that is not true of an order issued pursuant to section 15 (1). For, under that provision, the Commission, after finding that rates (individual or joint) are violative of section 3, *itself* determines and prescribes the just and reasonable rates to take their place; and, in such case, there is neither need for affording the carriers alternative ways of rgmoving the discrimination nor any need that carriers, participating in the discrimination through joint rates, have control thereover other than as is usual in the case of joint rates. Cf. *New York v. United States*, 331 U. S. 284, 341, 342.

Contrary to appellants' contentions, it was not necessary to give validity to the Commission's action and order that it find that the preferential rates were noncompensatory. For, having found

that the adjustments of rates before it were unjustly discriminatory, unduly preferential and prejudicial, it was empowered to determine and prescribe the just and reasonable future rates. *Idem,* 341. Moreover, although appellants' contention suggests the contrary, the Commission found that "this integrated adjustment of Illinois intrastate and Indiana interstate rates to northern Illinois reflects the lowest level of any important track delivery coal-rate adjustment in the country (R. 200); and further that the Indiana interstate rates as well as the Illinois intrastate rates were so low as to burden the carriers' revenues (R. 209).

ARGUMENT

I

THE COMMISSION DID NOT EXCEED ITS AUTHORITY BY DIRECTING ITS FINDINGS AND ORDER TO THE EXISTING AS WELL AS THE PROPOSED RATES AND RATE RELATIONSHIPS

As pointed out in the preliminary statement under the tariff schedules before the Commission in I. & S. No. 5139, the rate increases proposed from the Indiana groups to the northern Illinois destinations ranged in amounts from 5 to 15 cents, depending upon destination. At the time, the Milwaukee and the Illinois Central were maintaining from the mines on their lines in the Linton group to Rockford and other of the northern Illinois destinations served by them single-

line rates lower by 12 cents than the joint-line rates applying from all other mines in the Linton group to the same destinations and also from the mines on the Milwaukee and Illinois Central to such of the northern Illinois destinations as those two carriers did not serve directly. From the mines on its line in the Brazil group, the Milwaukee was maintaining to Rockford and the other northern Illinois destinations served by it, single-line rates lower by 17 cents than the joint-line rates applying from all other mines in the Brazil group to the same destinations and also from the mines on its own line to such of the destinations as it did not serve directly. Since the rate increases to the northern Illinois destinations proposed by the tariff schedules were generally the same in amounts from all of the mines in the two groups, including those on the lines of the Milwaukee and Illinois Central, the dual basis of rates, as then in effect, was, by such schedules, proposed to be continued. The Commission's conclusions and underlying findings condemned as unlawful such dual basis of rates both as maintained in the existing rate adjustment and as proposed to be continued (R. 183, 210-211). In determining the rates and relations that should be established from Indiana to the northern Illinois destinations, the Commission found that the single-line rates of the Milwaukee and the Illinois Central should be increased to the joint-line rate basis proposed and, further, that

the differential, Linton over Brazil, which in some instances was 5 cents and in others 10, should be stabilized at 10 cents, "the standard differential, in effect generally to the Northwest" (R. 187). The differential, Princeton over Linton, as existing and as proposed, was 7 cents. The Commission, however, considered that the Boonville group should be merged with the Princeton group and accorded the same differential of 7 cents (R. 187). The only mine in the Boonville group continuing to produce coal in any substantial quantity was that of the Sunlight Coal Company located about 10 miles across country from a mine in the Princeton group producing coal from the same seam (R. 186, 208).

In its formal conclusions with respect to the rates from Indiana to the northern Illinois destinations, the Commission found that the *present* and the proposed rates result, or would result, in violations of sections 2 and 3 (1) of the Act (R. 210–211). Similarly, the Commission's formal findings of fact are directed to the present, as well as the proposed, rates (R. 208–210). By its order the Commission required the railroads to desist from the violations found and, in effect, to establish rates and rate relations on the bases approved in the report (R. 222).

In their bills and briefs, appellants contend that the Commission's report and order are invalid because assuming to determine the lawfulness of the *present* rates from Indiana to Illinois

destinations and to require the railroads to establish rates designed to cure the unlawfulness of the *present* rates, an issue which, the appellants urge, was not before the Commission in the proceeding.

But it would seem that the *present* rates are always in issue in an I. & S. proceeding to the extent, at least, that, if the Commission approves the proposed new rates as lawful, such rates, when becoming effective, will take the place of the present rates. So that, appellants' contention is, in substance, that the Commission must either approve or disapprove *in toto* any new rates proposed. If it does not approve the new rates just as proposed, it is without authority, to modify the proposal in any respects and require that the proposed rates, as so modified, be substituted for the present rates. That the appellants are clearly wrong is apparent.

Under the I. & S. provisions (sec. 15 (7)) of the Act, it is provided that whenever there shall be filed any schedule stating a new rate, or any new classification, or regulation or practice affecting any rate, the Commission shall have authority, either upon complaint or its own initiative, to enter upon a hearing concerning the lawfulness thereof; that, pending such hearing and the decision thereon, it may, upon filing and delivering to the carriers affected a written statement of its reasons for such suspension, from time to time suspend the operation of such schedule, but not for a period longer than seven months; and that

"after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission *may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective.*" [Italics supplied.]

The last sentence of the above means, it is plain, that even though the proposed new rates or practices have not become effective, the Commission may deal with the situation as though they had; and that, in turn, necessarily means, it would seem, that the Commission may make such modifications in the proposed and existing rates as, in its judgment, the evidence calls for and require that the rates and practices which it finds lawful be established in the tariffs.

The paragraph of the Act specifying the kind of order the Commission can enter in a proceeding initiated after schedules become effective, is section 15 (1), which provides in part:

> That whenever, after full hearing, * * * the Commission shall be of opinion that any individual or joint rate, fare, or charge * * * or that any individual or joint classification, regulation, or practice * * * is or will be unjust or unreasonable or *unjustly discriminatory or unduly preferential or prejudicial*, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just

and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist * * *.

In *Akron, C. & Y. Ry. Co.* v. *United States*, 22 F. (2d) 199 (W. D. N. Y.), it was said (p. 203):

> Section 15, par. 7, empowered the Commission to entertain proceeding No. 2440. After a full hearing, *the Commission may make such order with reference to the proposed new rate as would be proper in a proceeding initiated after it had become effective.* It was within the power of the Commission, if it found the rate attacked to be unreasonable, under section 15, par. 1, to require a reduction of that rate to a basis found to be reasonable. *Advances in Rates, Western Case*, 20 Interst. Com. Com'n R. 307. It has power either to increase or decrease the then existing rates. *Western Paper Makers' Chemical Co.* v. *U. S.*, 271 U. S. 268, 46 S. Ct. 500, 70 L. Ed. 941; *Mo. Pac. R. Co.* v. *Boone*, 270 U. S. 469, 46 S. Ct. 341, 70 L. Ed. 688; *Excelsior from St. Paul*, 36 Interst. Com.

Com'n R. 349; *Naval Stores from Southern Points,* 87 Interst. Com. Com'n R. 740. [Italics supplied.]

In *Advances in Rates—Western Case,* 20 I. C. C. 307, 314, the Commission said:

> * * * The question before the Commission is that which would have arisen had these rates gone into effect and a formal complaint been made against them as unjust and unreasonable. We may establish the rates proposed as reasonable, one or all of them, or reduce the proposed rates. We may continue in effect the present lower rates, or we may reduce the existing rates. For "the Commission may make such order in reference to such rate * * * as would be proper in a proceeding initiated after the rate had become effective."

In *Lignite Coal from North Dakota,* 126 I. C. C. 243, 244, the Commission said:

> Respecting the jurisdictional question, the position is taken that, in an investigation and suspension proceeding, the only issue before us is as to the lawfulness of the suspended schedules; that we are called upon either to condemn or approve the schedules; that we have no authority to approve a basis intermediate between the existing rates and the basis sought to be made effective; and that as the proposed schedules were not approved, the finding that the present rates were too low was consequently "irrelevant," "gratuitous,"

and "not binding on anyone." But this view is wholly untenable and in conflict with specific provisions of the act and numerous decisions of the commission. See *Advances in Rates—Western Case*, 20 I. C. C. 307, at page 314; *Excelsior from St. Paul, Minn.*, 36 I. C. C. 349, at page 365; *Salt from Louisiana Mines to Chicago*, 69 I. C. C. 312, at page 313.

In *Sioux City Term. Ry. Switching*, 241 I. C. C. 53, 73–74, the Commission said:

> On brief, complainants question our authority to deal with this situation in these proceedings. In an investigation and suspension proceeding we constantly take cognizance of violations of sections 1, 2, and 3 of the act, and there being placed before us the question of what rates, rules, regulations, or practices are lawful for the future, we may require changes in the existing rates, rules, regulations, and practices (*Lignite Coal from North Dakota*, 89 I. C. C. 726); and we have authority to make such order with reference to the matters under investigation as would be proper in a proceeding initiated after the proposed schedules go into effect (section 15 (7)).
>
> * * * It is apparent that the unjust discrimination and undue prejudice can lawfully be corrected only by requiring respondent to decline further to extend free of charge facilities and services which under existing law it has no duty to

furnish. An appropriate order to that end will be entered.

In short, the statute (Section 15 (7)) and the construction given it from the beginning (*Advances in Rates—Western case, supra*) establish as entirely within its authority the Commission's findings in the instant case that the *present* as well as the proposed rates were unlawful and its order to desist from maintaining such rates. The appellants, in contrast to their contentions here, recognized throughout the Commission proceeding that the *present* rates were in issue and that a full hearing was accorded on that issue. For example, in its protest or petition to the Commission asking for suspension of the proposed rate adjustment, appellant Coal Trade Association of Indiana advanced as its first ground, "1. Because the *present* rates are in excess of reasonable maximum rates, and the proposed rates would be unreasonable in violation of Section 1 of the Interstate Commerce Act" (R. 132). During the hearings the said appellant's witness Scott was asked as to "the position of the Indiana operators with respect to the proceeding in issue." In reply he testified in part R. 1060–1061:

> A. We filed a petition with the Commission seeking suspension of the rates from the Indiana mines to destinations in Northern Illinois and Beloit, Wisconsin. * * * Our position with respect to the rates to destinations in Northern Illinois is that

the present rates on bituminous coal from Indiana mines are not less than reasonable maximum rates, but are *unreasonable and excessive* * * *. Furthermore, the *present* and proposed rates to these Northern Illinois destinations *subject the producers and shippers of coal from Indiana mines to an undue prejudice and accord the producers and shippers of coal from Illinois mines,* who ship in interstate and intrastate commerce within the State of Illinois, *an undue preference in violation of Sections 3 and 13 of the Act, and subject some producers and shippers of Indiana coal to an undue prejudice and accord other producers and shippers of Indiana coal an undue preference, in violation of section 3 of the Act.*

* * * It is our position that under sections 3 and 13 of the Act, the Commission should *prescribe rates that will result in the restoration* of the standard differentials between the Illinois mines on the one hand and the Indiana mines on the other, and as between the Indiana mines themselves which standard differentials existed prior to 1930 to these Northern Illinois destinations, and which has existed and which exists today to the territories north, northwest, and west of the Northern Illinois destination territory.

Q. By whom were the exhibits which you will introduce in this proceeding compiled?

A. They were compiled by me, and under my direct supervision. [Italics supplied.]

Furthermore, in exceptions [18] to the Examiner's proposed report, appellant Coal Trade Association of Indiana said:

> In these proceedings, under the issues involved in the Investigation and Suspension case and the 13th Section case, the present record is sufficient for the Commission to determine the propriety of the level of the rates from the mines in Illinois and Indiana to these destinations in northern Illinois and Beloit, and the differentials to apply as between the mine origin groups in said States in the movement of coal to such destinations (p 17).

It was also urged in the exceptions that:

> The record shows the transportation conditions within Illinois and from Indiana to these destinations to be the same. There is no evidence omitted from this record which is necessary for a decision of these issues. Why postpone again to a future proceeding whether by way of arbitration or by way of some hitherto unknown type of proceeding before this Commission, the question of the final disposition of the issue of the proper relationship and measure of the rates from these two competing sets

[18] Reference is made to these exceptions pursuant to agreement in the Stipulation As To The Record (R. 1700). The exceptions are not included in the printed transcript but appear as one of the documents included in plaintiffs' exhibit 3 filed at the hearing in the District Court and included in the record transmitted to this Court.

> of origin groups in Illinois and Indiana to this important destination territory? * * * We urge that the Commission exercise the jurisdiction conferred on it by the Act, and enter an order based on the facts, * * * and that there be no further postponement in making effective within this territory a rate adjustment that is fair and reasonable to all concerned, a rate adjustment that protects the interests of the consumer as well as the producers of coal in this territory [pp. 111–112].

It would appear from the above that the Coal Trade Association of Indiana, the principal protestant, raised the issue of the lawfulness of the *present* rates and rate relations; that during the proceedings it made unmistakably plain that it had done so; that it in effect insisted that it was the Commission's duty to proceed and prescribe the fair and reasonable rates and rate relations; and that the evidence was ample for the purpose. As stated in *New York Cent. & H. R. R. Co.* v. *Int. Com. Comm.*, 168 Fed. 131, 139 (S. D. N. Y.), the Commission is an administrative tribunal dealing with practical problems. "Before we declare an order of the commission invalid as being outside the issues, we think that we should be satisfied that it is outside the issues actually presented to the commission and upon which the parties were heard."

BY REPUBLISHING ITS SINGLE-LINE RATES TO BELOIT THE MILWAUKEE PUT THOSE RATES IN ISSUE AS A PART OF THE PROPOSED READJUSTMENT OF RATES TO THAT DESTINATION

While, as to the northern Illinois destinations, the dual basis of rates from the Brazil and Linton groups which it was proposed to continue, already existed, this was not true of the rates to Beloit, these being the same in amounts from all mines in the respective groups including the mines on the line of the Milwaukee. Under the proposed schedules, however, a dual basis of rates to Beloit was to be established for, while the joint-line rates as applying from all mines other than those on the Milwaukee were to be increased, no increase in the single-line rates of the Milwaukee from the mines directly served by it was proposed. And similarly as to the proposed rates from the Princeton group, while the rates as applying from all other mines were to be increased, no increase in the rates from the mines in that group on the Southern and Algers, Winslow and Western was proposed. The Southern was the only carrier serving the Boonville group and it proposed no increase in the rates to Beloit from that group (R. 178).

In its bill (R. 14–15) appellant Ayrshire Collieries contends substantially that, since the Milwaukee had not proposed any change in its single-line rates from mines on its lines in the

Brazil and Linton groups to Beloit, those rates were not in issue and the Commission, therefore, had exceeded its authority in requiring that they be increased.[19] This contention is clearly wrong in all respects.

Although, in connection with the increase proposed by the carriers, including the Milwaukee, in the joint-line rates from the other mines in the Brazil and Linton groups to Beloit, the Milwaukee had not proposed to make like, or any, increase in its single-line rates, nevertheless, along with the general readjustment of rates to Beloit proposed, the Milwaukee republished its existing single-line rates to Beloit; and the said republished rates were included among the proposed rates which the Commission, by order, suspended and made subject to the investigation.

[19] Appellant makes the same contention as to the rates to Beloit from the mines in the Princeton and Boonville groups on the lines of the Southern and the Algers, Winslow and Western. Here the situation is different; for the Southern's tariff included in the Commission's order of investigation does not contain any rates from Princeton or Boonville to Beloit, and because of that the Commission made no findings or order as to such rates. The Commission's Conclusion No. 2 (R. 210–211), which deals with the rates to Beloit, relates only to the proposed rates from the Brazil, Linton and Princeton districts "as published in the tariffs enumerated in Appendix E" and, since such tariffs do not contain rates of the Southern Railway to Beloit, it is evident that the Commission made no findings or order with respects to such rates. This is further shown by the fact that Boonville is omitted from the Indiana districts named in Conclusion No. 2.

The Commission's order of investigation (R. 141–144) in I. & S. No. 5139 provides in part as follows:

> It appearing, That there have been filed with the Interstate Commerce Commission tariffs containing schedules * * * designated as follows:
>
> * * * * *
>
> Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees.):
>
> Supplement No. 9 to I. C. C. No. B–7238;
>
> Supplements Nos. 27 and 28 I. C. C. No. B–7246;
>
> Supplement No. 25 to I. C. C. No. B–7287;
>
> * * * * * *
>
> *It is ordered*, That the Commission * * * enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz:
>
> * * * * *
>
> And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order.

In short, the Commission's order of investigation provided for investigation of the lawfulness of all rates contained in the tariffs named in the order. Among the Milwaukee tariffs specifically

named is Supplement No. 27 to I. C. C. No. B–7246. Item 371 thereof states that the rate from Brazil-Clinton to Beloit via the single-line route of the Milwaukee shall be $2.10 and that the rate from Linton-Sullivan to Beloit via the single-line route of the Milwaukee shall be $2.30. Thus it is evident that the Milwaukee tariff under investigation contained the very rates which the appellants assert the Commission was without authority to deal with. Moreover, although literally speaking the Milwaukee, by republishing its existing single-line rates from the mines on its lines to Beloit was not proposing "new" rates, still it was proposing not to increase those rates while, at the same time, joining in the proposal to increase the joint-line rates (to many of which it was a party) from the other mines in the groups to Beloit; and, therefore, it was proposing a "new practice affecting" the rates to Beloit. For, under the existing adjustment of rates from the Indiana groups to Beloit, the group basis of rates was being maintained—all mines in the same rate group paying the same rates to Beloit.

The Commission's authority under section 15 (7) taken together with its authority under section 15 (1) is well brought out in *Coal Rates from Oak Hills, Colo.*, 30 I. C. C. 505, in which the Commission said at p. 508:

> Under section 15, paragraph 1, of the act, the Commission, on its own initiative, whenever it is of the opinion that any rates

demanded, charged, or collected are in any way unlawful, may enter upon an investigation, hold full hearings, and determine and prescribe just and reasonable rates. Where new rates are filed, the Commission, under section 15, paragraph 2 [now paragraph 7], is authorized by similar means to determine the propriety of such new rates and, pending such determination, to suspend the operation of the schedules stating such new rates. In connection with the latter hearing the statute casts upon the carrier the burden of justifying any increased rates.

As has already been observed, the proposed rates include some increases over and some decreases under the present rates, *while in other cases the proposed rates are the same as the present.* The order herein shows plainly the intent of the Commission to enter upon a hearing concerning the propriety of the increases and the lawfulness of the rates under suspension, and provides that the operation of *all* schedules contained in the proposed tariff be suspended. Clearly, when the proposed rates involve increases or decreases they are new rates, and as to them the Commission's jurisdiction in this proceeding is full and complete by virtue of the second [now seventh] paragraph of section 15. *If the rates in which no change is proposed be not new rates, then they are necessarily rates "demanded, charged, or collected," and their investigation in this proceeding is proper*

> *under the first paragraph of section 15.* And certainly there can be no doubt under the second [seventh] paragraph of the Commission's power to suspend in its entirety the schedule stating these rates. [Italics ours.]

That, entirely aside from the fact that the Commission's order of investigation specifically covered the Milwaukee's existing single-line rates to Beloit, the appellants were fully apprized that the lawfulness thereof was under investigation has already been demonstrated by the excerpts from the testimony of their witness Scott and from the exceptions to the Examiner's report filed in the case. See *supra*, pp. 46 to 49, inclusive.

II

THE COMMISSION'S ORDER IS SUPPORTED BY FULL FINDINGS, RATIONAL CONCLUSIONS AND AMPLE EVIDENCE

Summarizing the Commission's principal, or ultimate, findings as a background for argument:

The Commission, in condemning as unlawful the dual basis of rates, both as proposed to be continued from the Brazil and Linton groups to destinations in northern Illinois and as proposed to be extended to the adjustment of rates from those groups to Beloit, Wis., found such dual basis of rates unjustly discriminatory in violation of section 2 and unduly preferential and prejudicial in violation of section 3. As to the rate relations between the respective Indiana

groups and between the Indiana and Illinois groups and western Kentucky, the Commission found the adjustments thereof to be unduly preferential and prejudicial in violation of section 3. In determining and prescribing the just and reasonable future rates, the Commission found, among other things, that the rates from the Indiana groups were so low as to burden the carriers' revenues and that the "approved rates" (shown in the appendices to its report) "will result in a reasonable, non-discriminatory and non-prejudicial adjustment from Indiana, Illinois and western Kentucky to all points in the destination territory."

While appellants contend generally, both as to the Commission's conclusions of section 2 and of section 3 violations, that the supporting findings in the report are inadequate, they make this distinction. Referring to the Commission's conclusion that the dual basis of rates maintained and proposed was unjustly discriminatory in violation of section 2, they contend that that section's prohibition against discriminatory rates applies only to shipments moving from the same origin over the same line or route to the same destination, citing in support certain decisions and Commission reports.

But here the rates before the Commission were rates made pursuant to the group rate principle, long accepted as sound for use in the adjustment of rates applying on coal moving from producing

districts to marketing destinations. Cf. *Ohio v. United States*, 292 U. S. 498, 502; *Langdon v. Pennsylvania R. Co.*, 194 Fed. 486 (E. D. Pa.). Inherent in the scheme of such rates is the treatment of all origin points within a given producing area as constituting a single shipping point for purpose of the rate charged. Such producing areas are usually extensive with origin points widely dispersed and, in consequence, are usually served by groups of carriers rather than by the same line or route. So that, if appellants' contention that section 2's prohibition relates only to shipments moving from the same origin over the same line or route were accepted as sound for application here, the result, it is evident, would be that, while the rates involved are made on the group rate principle of treating, for purpose of the rate charged, all origins within a producing area as constituting one shipping point, still when it comes to the giving effect to section 2, all this is to be disregarded in favor of an interpretation of the section incompatible with the scheme of such rates and situations to which they apply. The practice of grouping origins within coal districts and other areas containing natural resources (see pp. 9–10, *supra*) has been long in existence and is embodied in many rate structures. Appellants' construction of section 2 would render its prohibition innocuous in many situations to which it is obviously intended to apply.

True, since the single-line rates of the Milwaukee and Illinois Central from mines on their own lines in the Brazil and Linton groups were on a much lower level than the joint-line rates from the other mines in those groups, it can't be said that those carriers, in participating in the rate adjustments, were consistently accepting, and adhering to, the group rate principle of treating all origins within a producing area as constituting one shipping point for purpose of the rate charged. But the Milwaukee and Illinois Central, while maintaining the low single-line rates from mines on their own lines to destinations which they respectively reached, were, at the same time participating (to the extent applicable to their respective lines), in the higher joint-line rates, and the latter rates applied, not only from all other mines in the groups, but also from the mines on the Milwaukee and Illinois Central to such of the destinations in the marketing territory involved as were not reached and directly served by those two carriers.

As for the support afforded the Commission's order by its conclusions that the dual basis of rates and other adjustments, existing and proposed, were unduly preferential and prejudicial in violation of section 3, the appellants also challenge the adequacy of the supporting evidence and findings. However, such challenge, as made by the Milwaukee, consists of a lengthy recital (Br., pp. 12–19) of what is required of the Commission

by way of findings, of repeated statements that mere perfunctory findings are not enough to satisfy the requirements (Br., pp. 12, 17, 18, 19) and of a few unsupported statements simply asserting absence of certain findings. The contention of inadequacy of findings and evidence, as urged by the Ayrshire Collieries, is also general and lacking in particularization, except that the latter appellant stresses absence of specific evidence of injury, such as proof of actual loss of business by the mines discriminated against.

From mines in the Linton group on their lines to destinations in northern Illinois directly served by them, the Milwaukee and Illinois Central were maintaining single-line rates lower by 12 cents than the joint-line rates maintained to the same destinations from all other mines in the group. From mines in the Brazil group on its line to destinations in northern Illinois, the Milwaukee was maintaining single-line rates lower by 17 cents than the joint-line rates maintained to the same destinations from all other mines in that group. By the schedules before the Commission it was proposed, not only to continue such dual basis of rates to the northern Illinois destinations, but also to inaugurate it into the adjustment of rates to Beloit. These facts found by the Commission are not questioned by the briefs of appellants.

Referring to the participation by the Milwaukee and Illinois Central in the joint-line rates

from the Indiana groups, the Commission says in its report (R. 181–182):

> As stated, both the Milwaukee and the Illinois Central join in the so-called normal rates, by which is meant the rates maintained or proposed by most of respondents, from mines in the Brazil or Linton districts to the same destinations to which they maintain their lower single-line rates. They also participate in the rates, all of which are joint-line, from the Princeton and Boonville groups to the same destinations.[20]

The Commission found (R. 183) that "the transportation conditions over the single-line routes * * * do not differ materially from those over the joint-line routes to the same desti-

[20] Six railroads in all serve the Brazil and Linton groups (R. 180) but, of these, only the Milwaukee reaches Beloit, Wisc., and only the Milwaukee and Illinois Central reach the northern Illinois destinations with their own lines. Of the 12 representative northern Illinois destinations referred to in the report, the Milwaukee had single-line rates to 5—Rockford, Freeport, Forreston, Byron and Dekalb. To those destinations and to Beloit it, at the same time, joined in the through routes and joint rates maintained from the mines on the lines of the other carriers. Exhibit 3, Sec. V, pp. 6, 9, 10, 15, 16, 18, 19, 30. From the mines on its own lines to the 7 representative destinations not reached by it, the Milwaukee was also party to the joint-line rates. Exhibit 3, Sec. V. The Illinois Central had single-line rates from the Linton group to Rockford, Freeport, Dixon and Forreston. Exhibit 3, Sec. V, shows that that carrier also joined fully in the joint-line rates.

nations from other mines in the same group"; that "there is no important difference in the average distances over those respective routes"; that "normally, coal sales turn on a price difference of as little as a few cents a ton"; and that "plainly, therefore, only by the establishment and maintenance of a single-rate basis * * * can unjust discrimination and undue prejudice be avoided." It is believed that the Commission's conclusion here is entirely rational, and, as further said by the Commission (R. 183):

> Under the circumstances recited, an extensive showing of injury through the loss of tonnage to particular coal shippers or consumers by reason of discriminatory rates here before us is not required. *United States* v. *Trucking Co.*, 310 U. S. 344.

Only last term this Court sustained a similar ruling of the Federal Trade Commission. See *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 45–47.

After all the question of the *unjustness* or *undueness* of discrimination or prejudice is for the Commission. The statute does not specify that injury or damage must be shown with the same particularity as necessary to determine and fix reparation claims. The Milwaukee served but 4 of the 30 mines in the Brazil group and but 9

[2] Contrary to appellant's allegations, the evidence of record was ample to support the Commission's findings of similarity of transportation conditions (R. 778–824, 1209, 1239, 1612). Moreover, before the Commission, the position of the Indiana Coal Trade Association was just the opposite (pp. 46–49, *supra*).

of the 31 mines in the Linton group and yet a witness for that railroad testified that, of the total tonnage moving from those groups to Rockford, the Milwaukee handled under its single-line rates 95.4 percent of that moving from Brazil and 78.5 percent of that from Linton. The witness further said that there was a movement from mines on other railroads taking the higher rates but that it was relatively small as compared with the movement under the single-line rates (R. 668). The natural significance of this testimony is that the lower rates played a considerable part in securing for the Milwaukee the large tonnage of coal moving over its single-line routes to Rockford, and the Commission's findings attach that significance to the evidence (R. 182–183; 206). However, the Milwaukee's brief (p. 22) says that, in its petition for rehearing, it offered to show that, during the period prior to 1934 when the rates to Rockford from all mines in the Brazil and Linton groups were at the same level, it handled from 60 to 99.07 percent of the tonnage moving to that destination; and it further says that the Commission, in refusing to reopen the case, denied it an opportunity to explain the only statement in the report "that can possibly be construed as supporting the finding that the condemned rates violated section 3."

This assertion, it is apparent, is unwarranted. Conditions at the mines and at the consuming points presumably have not remained static, and,

in any event, if the Milwaukee considered the evidence important, it had ample opportunity to introduce it before the hearings closed. The northern Illinois destinations and Beloit, Wis., afford natural markets for coal produced in the Indiana mine groups and, as found by the Commission, all the mines in the groups in general produce coal of the same quality and grade. (R. 206). Differences in rates as great as 17 and 12 cents have their inescapable consequences. Even assuming that during some period prior to 1934 when the rates from all mines in the Brazil and Linton groups were the same the Milwaukee handled from 60 to 99 percent of all coal moving from those groups to Rockford, still it would not be illogical to conclude that the low single-line rates of the Milwaukee played a not inconsiderable part in the recent showing testified to by the Milwaukee's witness of a relatively very large tonnage moving under those rates as compared with that moving under the higher group, or joint-line, rates. Certainly such differences in rates could reasonably be considered as having an important bearing on the future opportunities of shippers in the groups to market their coal in the destination territory. As in effect found by the Commission (R. 207, 208), with the dual basis of rates continued to northern Illinois and extended to Beloit, there could be no expectation of stabilizing the coal-rate adjustment upon a reasonable and nonprejudicial basis.

In addition to their condemnation of the dual basis of rates, as existing and as proposed, the Commission's findings also applied to the differentials between the respective Indiana groups (R. 210–211). As above pointed out, the Commission, in determining the just and reasonable relations that should be maintained between those groups, found that the differential, Linton over Brazil, which in some instances was 5 cents and others 10, should be stabilized at 10 cents. This was the standard differential, in effect generally to the northwest and the decline in volume of movement from the Brazil group had been much greater than that from the Linton group (R. 187). The differential, Princeton over Linton, as existing and as proposed, was 7 cents (the standard differential), except that as between Princeton, on the one hand, and Linton mines on the Milwaukee and Illinois Central, on the other, to Rockford and certain other destinations in northern Illinois, the rate difference was 19 cents. As above stated, the Commission found (R. 183) that there was no material difference between the transportation conditions over the single-line routes of the Milwaukee and Illinois Central and those obtaining over the joint-line hauls. Speaking of this particular adjustment, the Commission said (182) that "between the Linton points on the Milwaukee or the Illinois Central and the Princeton mines the present and the proposed differential is and would be 19 cents instead of

the usual 7 cents; and between those same Linton origins and the Boonville mines the difference reflected by the present and proposed rates is 22 cents, instead of the standard differential of 10 cents, or the differential herein approved of 7 cents. What has just been said would be true also under the proposed adjustment to Beloit." The Commission considered and found (R. 207) that the differential maintained by the two carriers was greater than warranted by the respective distances. The fair and reasonable differential between all mines in the respective Linton and Princeton groups to all of these destinations was found by the Commission to be 7 cents (R. 187).

From the above it will be seen that, except for the fact that the Commission disapproved the advantage secured to mines on the Milwaukee and Illinois Central by the comparatively low single-line rates of the latter carriers, existing and proposed, the Commission's action in respect of the differentials between the Indiana groups was not materially different than what was proposed, including the proposal of the Milwaukee and Illinois Central through the medium of the joint-line rates in which they joined.

The grievance especially asserted by appellants appears to relate to the differentials prescribed by the Commission as fair and reasonable as between the Indiana groups and the Illinois groups (Milwaukee Br. 5; Ayrshire Br. 78), their

contention being that the differentials prescribed were arbitrary and disrupted long-standing rate relationships between mines on the Milwaukee in the Brazil and Linton groups, Indiana, and mines in the Illinois groups, particularly Springfield and southern Illinois (Ayrshire Br., 78–79). As illustrative of appellants' contentions: the Milwaukee says (Br. 28) that its proposed single-line rates from mines on its lines in Indiana continued "a relationship with rates applicable from origins in Illinois, existing with unimportant interruptions since 1910, and a relationship which experience has proved necessary if mine operators on the Milwaukee are to compete" at the marketing destinations involved. And the Ayrshire Collieries, referring with apparent approval to the testimony of an operator of coal mines, says (Br. 49) that he testified

> that the Milwaukee rates are lower than the rates over other carriers serving the Brazil and Linton groups; that this situation is a maladjustment; that *the rates of the Milwaukee are on the proper relative basis compared with the Illinois groups;* and that the rates from other Indiana groups should be adjusted to the rates of the Milwaukee from the Brazil group.

Ayrshire Collieries also says (Br. 45) that the Milwaukee's single-line rates from mines on its lines were "on the basis of the standard differentials with the rates from the mine groups in Illinois." At the time of the Commission pro-

ceeding the Milwaukee's single-line rates from mines in the *Brazil* group were on the basis of the standard differentials, namely, 30 cents under the rates from Southern Illinois and on a parity with the rates from Springfield. This had resulted from the reductions made by the Milwaukee in its single-line rates to meet the reductions in Illinois intrastate rates made in 1930 pursuant to the State Commission's order. However, so far as the destinations in northern Illinois of Rockford, Freeport and Dixon [22] are concerned, neither the single-line rates of the Milwaukee or Illinois Central from mines on their lines nor the joint-line rates from the other Indiana mines had been on a fixed and definite differential basis with rates from the Illinois mines. As found by the Commission (R. 176), while—

> for some years prior to 1930 the so-called standard differentials applied to most of those northern Illinois destinations, there appears to have been then, as now, no fixed relation either between the Indiana groups or between those groups and Southern Illinois or Springfield, to Rockford, Freeport, and Dixon, the principal coal-consuming points in this destination territory.

[22] As shown above, the Milwaukee served directly only 5 of the northern Illinois destinations, two of which were Rockford and Freeport and the other three were destinations of less importance. In its brief, the Milwaukee centers its argument on its single-line rates to Rockford. The Illinois Central, which maintained the low basis of single-line rates from the Linton group, served all three of the important destinations—Rockford, Freeport and Dixon.

Using the group rates to Rockford as illustrative, the Commission's report shows that, for a 15-year period prior to 1925, the differentials between the respective Indiana groups and Southern Illinois varied greatly and that, in 1925, the railroads "voluntarily reduced the rates from the respective Indiana groups to Rockford by 5, 6, 8 and 28 cents,[25] and made no reductions in the rates from any of the Illinois groups" (R. 176). There followed in 1930 the order of the Illinois Commission requiring the reduction in intrastate rates from the mine groups in Illinois.

All of appellants' contentions, so far as concerned with the Indiana and Illinois rate relations, appear to rest on a chain of assumptions. Starting with the assumptions that prior to the 1930 reductions in Illinois intrastate rates, the Milwaukee single-line rates from the Indiana groups were properly related thereto and that the intrastate reductions brought about unfair relations favoring mines in the Illinois groups, applellants urge in effect that it follows that the subsequent reductions in like amounts made by

[25] "From January 1, 1910, to July 18, 1925, the rates from Indiana were lower than those from southern Illinois by from 20 to 27 cents from Brazil, 14 to 15.2 cents from Linton; 4.5 cents to 12 cents from Princeton, and higher than from Southern Illinois by from 13 to 21 cents from Boonville" (R. 176). As a result of the voluntary reductions in 1925, the rates from the Indiana groups became lower than those from southern Illinois by 30 cents from Brazil, 25 cents from Linton, 18 cents from Princeton and 15 cents from Boonville (R. 176).

the Milwaukee in its single-line rates from mines on its lines in Indiana only served to continue or restore the previously existing fair and proper rate relationships as between those Indiana mines and the Illinois mines (Milwaukee Br., 28). But appellants' basic assumption, that prior to 1930 the Milwaukee's single-line rates to Rockford, Freeport and Dixon were properly related to the Illinois rates to those destinations rests, so far as appears in their briefs, simply on assertions that the relationships were of long-standing, whereas the history thereof and the Commission's findings, above given, establish the contrary. So that, it would seem that appellants' contention that the reductions made by the Milwaukee in its single-line rates from Indiana mines operated only to continue fair and proper rate relations with the Illinois mines that had existed prior to 1930 lacks even the support that would be given it, if the prior rate relations had in fact been of long-standing.

Furthermore, appellants' contention that the said reductions in single-line rates from Indiana mines operated only to continue prior fair and proper rate relations with the Illinois mines is further discredited and disputed by the fact that it appeared from exhibits of production and tonnage shipped (R. 185, Ex. 4, sec. VIII, Ex. 99) that, to Rockford, Freeport and Dixon the shipments from the Indiana mines in 1941 (the last year for which the record contained complete

figures) showed an increase over the year 1936 (regarded as normal in the coal industry) much greater (148.2%) than that shown for the Illinois mines (16.8%). True, the reductions made by the Milwaukee and Illinois Central in their single-line rates from mines on their lines in the Indiana groups were in effect, or partly so, during the year 1936, but, since the Milwaukee reductions were not established until some time in 1934 and the Illinois Central reductions not until some time in 1936 (R. 177), it seems probable that the effect thereof was only in part reflected in the Indiana tonnage figure for 1936 (see Ayrshire Br., 46).

Moreover, if as asserted by the witness quoted in the Ayrshire Collieries' brief, the adjustment being maintained from the Brazil and Linton groups, Indiana, of single-line rates lower from mines on the Milwaukee than the joint-line rates from the other mines was a maladjustment which, because the single-line rates were on a proper relative basis with the Illinois rates, should be corrected by lowering the joint-line rates (Ayrshire Br., 46, 49), it would follow that, in order that said exhibits reflect the effect of Indiana rates, properly related with Illinois, from all mines in the Indiana groups, said joint-line rates should have been reduced in amounts corresponding to the reductions made in the Milwaukee's single-line rates. And certainly, if that had been done, it may reasonably be assumed that the said

showing of much greater increase in the shipments from Indiana mines than that shown from Illinois mines would have been even more favorable to Indiana.

In addition to the evidence above discussed, refuting appellants' contention that the Milwaukee's single-line rates continued a relationship with the Illinois rates going back to 1910 and strongly indicating that they were not, in fact, soundly related thereto,[24] the Commission used and applied other evidence which it deemed particularly important, not only as enabling it to determine the questions of sound relationships involved but also as a measure of the reasonableness of level of the rates to be prescribed (R. 172, 173, 194), namely, the distance scales of reasonable maximum rates referred to in the report as the Indiana-Illinois scale and set forth in Appendix C thereof. After giving illustrations of the use of the scale as applied to the approved rates from representative Indiana and Illinois groups (see preliminary statement, p. 24, *supra*) the Commission said (R. 191):

> Taken as a whole, the combined rates herein approved from Indiana to the 12

[24] Based on the exhibits of tonnage produced and shipped, the report also makes like comparison of increase in tonnage shipped, Indiana over Illinois, to 7 northern Illinois destinations and to Beloit, Wisc., saying, for example (R. 185): "In that period (1936–1941) the movement to Beloit and 7 of the representative northern Illinois destinations increased 4 percent from Illinois and 121.4 percent from Indiana."

northern Illinois destinations average 86.1 percent of the Indiana-Illinois scale and 70.7 percent of the Midland scale and the combined rates herein approved from the Illinois groups to those destinations average 85.4 and 70.3 percent of those scales. We believe that the rates or rate bases above indicated, which are set forth more specifically in appendixes A and D hereto, will afford fair and reasonable relations of rates to northern Illinois destinations, both as between the respective origin groups and as between the Indiana groups on the one hand, and the Illinois groups on the other.

It will be seen that the percentage figures resulting from application of the scales are approximately the same for Indiana as Illinois and that they also show that the approved rates do not exceed, but on the contrary are well below, the maximum level of reasonableness set by the scales.

In connection with the approved rates to Beloit, Wisc., the Commission made the same use and application of the scales and set the results out in the report (R. 193). While to Beloit the approved rates are shown to be on a somewhat higher level than those to northern Illinois, the report points out that they conform to the prescribed maximum spread of 15 cents, Beloit over Rockford (*Fairbanks-Morse case, supra*), and also that Beloit properly takes somewhat higher rates than does northern Illinois because located

at the edge of a territory in which the transportation conditions are less favorable (R. 192).

Concluding its discussion of the evidence and considerations governing its determinations of the fair and reasonable rate relations involved in the adjustment, the Commission said (R. 194):

> In approving the foregoing rate relations, we have kept in mind the importance to consumers, coal operators, and railroads of relating these differentially related coal rates, not strictly upon distance, but so as to afford all concerned a fair opportunity to compete in the purchase, sale, and transportation of coal from Illinois and Indiana mines to these destinations. The rates between the various origin groups in these fields have never been made with primary regard for distance, and to so make them now would have the effect eventually of eliminating practically all competition between most of them, a result which would be highly undesirable to the consumer, whose interests we may not disregard.

The appellants' briefs set forth comparisons of rates and mileages to the northern Illinois destinations from the Indiana groups, on the one hand, and Southern Illinois and Springfield (particularly the latter), on the other hand, to the end, judged by their statements, of showing capriciousness and arbitrariness on the part of the Commission. But the comparisons do not compare like with like. They ignore the basic principles

applied by the Commission. Early in its report the Commission said (R. 170):

> Illinois has eight coal-producing districts, of which Springfield in central Illinois has long been the largest in area and southern Illinois the largest in production. Up to recent years southern Illinois was regarded as the base Illinois group, but in the last decade the Fulton-Peoria group in northwestern Illinois has materially increased its production, and in *Midland Electric Coal Corp* v. *Chicago & N. W. Ry. Co.*, 232 I. C. C. 5, and *Fairbanks-Morse & Co.* v. *Alton & S. R., supra,* that group was used as the base from Illinois mines to all points in Iowa and to certain points in southern Wisconsin.

In the comparisons later made in the report, Fulton-Peoria is used and frequently referred to as the base Illinois group. Appellants may not agree that the Commission was right in using Fulton-Peoria as the base. But generally, as in Indiana, the group nearer destination points is used. In Illinois, this has not been the case. For reasons stated by the Commission the northern Illinois group has not been used as the base (R. 184). Instead southern Illinois, a big producer, has been used and is still used to many destinations. Springfield, large in area but not so in production, has not been used as the base group in Illinois. So far as appears from their briefs, the appellants do not assert that it should be.

For reasons given by the Commission, Fulton-Peoria, lying north of Springfield, has been of recent years used as the base to the destination territory specified by the Commission. In any comparisons of rates and mileages, using Fulton-Peoria as the base, it will be found that a quite different picture is shown than appears from appellants' briefs. Moreover, even using Springfield for comparison, there is another picture than that afforded by appellants' comparisons.

Appellants point out that the rate approved by the Commission from the Brazil group to Rockford is $2.07 for 251 miles and that the approved rate from the Springfield group to Rockford is only $1.95 for 257 miles, and they say such an adjustment can not be sound. But many rates can be found in the adjustment approved by the Commission which reflect the reverse condition. Thus, to Forreston, Ill., an important destination, the distance is 36 miles greater from the Brazil group than from the Springfield group, but the approved Brazil rate is only 5 cents higher than that approved from Springfield, and to Sterling, Ill., another important destination, the distance is 103 miles greater from the Brazil group than from the Springfield group, but the approved rate is only 14 cents greater from Brazil than from Springfield. Under the above-mentioned Indiana-Illinois distance scale of reasonable maximum rates for application from base groups to particular destinations in this general territory,

the Brazil rate to Sterling would be 40 cents higher than that from Springfield, whereas, as pointed out, the approved spread is only 14 cents. To Dixon, Ill., the distances are 177 miles from the Springfield group and 257 miles from the Brazil group, a difference of 87 miles and to Rochelle, Ill., the distances are respectively 200 and 255 miles, a difference of 55 miles. Nevertheless, the Indiana operators insisted that the Commission prescribe the same rate from both origin groups to each of these destinations.

In order to show that comparisons based on distance alone are misleading, consideration should be given to some of the other rates in the adjustment approved by the Commission which viewed only from a distance standpoint result in rate relations favorable to Indiana. To Dixon, the approved rate from the southern Illinois group for 312 miles is $2.05 and that from the important Princeton-Boonville group in Indiana, for about 355 miles is $2.06, or a spread of only 1 cent for a difference in distance of 43 miles. To Sterling the approved rate is $2.05 for 329 miles, from the southern Illinois group and $2.06 for 379 miles from the Princeton-Boonville group or again, a spread of 1 cent for a difference in distance of 50 miles. A number of additional such illustrations can be found. These latter comparisons are with the more distant groups in

each of the states and are fair because both mine groups are in the same relative position in the respective states. That cannot be said of the comparisons between the Brazil and Springfield rates, for Brazil is a base group and Springfield a differential group, and the comparison therefore is improper and valueless because the groups are not in the same relative position in the rate adjustment. From Illinois, Fulton-Peoria is the base group and Springfield is uniformly related to the Fulton-Peoria group on the basis of a differential, usually 30 cents, which is on a substantially lower level than any of the base group rates in this adjustment. Obviously, therefore, any comparison between the Brazil and Springfield rates is of unlike things and must be evaluated accordingly.

Even though, based on recognized principles, a coal rate adjustment were 100 percent perfect, presumably, if those principles were ignored, seeming inconsistencies could be pointed out. Just as in cases of grain rates and other like adjustments, coal rate adjustments present complex and difficult problems. But it cannot be doubted that here the Commission proceeded in a rational manner and, in fact, prescribed an entirely fair and reasonable adjustment of rates. *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534; *Ohio* v. *United States*, 292 U. S. 498, 506, 511.

III

THE COMMISSION DID NOT EXCEED ITS AUTHORITY IN APPROVING AND PRESCRIBING THE ADJUSTMENT OF RATES TO BE ESTABLISHED

Both the brief of the Ayrshire Collieries (pp. 52–58) and that of the Milwaukee (pp. 27–31) contend that the Commission's order was beyond its authority because not affording the carriers alternative methods of removing the discrimination and because the Milwaukee, for example, although having exclusive control of its low single-line rates, did not, with like effectiveness, control the higher joint-line rates. Both briefs rely on *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627.

In the first place, it should be clearly understood that the order is not, as suggested in Appellants' Brief in Opposition to the Motion to Affirm (p. 18), merely an order to desist from unjust discrimination, but is an order under section 15 (1) determining and prescribing the just and reasonable future rates. This is recognized in the allegations of appellants' bills (R. 9, 14, 38, 39) that the order requires the railroads "to publish and maintain rates in the future on a certain basis," and that that is the fact is demonstrated by the illustration given at page 58 of the brief filed by the Alton Railroad Company et al., appellees herein. It may be also readily demonstrated from the fact that the report itself shows

that the rates set forth as approved rates in Appendix A were in fact prescribed rates which the carriers, in order to comply with the order, had to establish in their tariffs. In this connection, it should be borne in mind that, while the Commission made important changes in the rates proposed by the carriers, since the proceeding was an I. & S. proceeding, its designation of the rates, making up the adjustment it found lawful as "approved rates" was entirely usual.

Considering first the rates from the Indiana groups to the northern Illinois destinations, the Commission, in arriving at the "approved rates" sets out step by step the changes it makes in the proposed rates, saying (R. 187):

> If the proposed rates from the Indiana groups which are higher than the so-called normal basis were reduced to the latter basis, and if the single-line rates of the Milwaukee and the Illinois Central from the Linton district were increased to the normal basis proposed from the other mines in that group, the rates from all of the Brazil mines made 10 cents less [than from Linton], and the Princeton-Boonville rates made 7 cents more, the resulting rates to the 12 destinations would average $1.95 from Brazil, $2.05 from Linton, and $2.12 from Princeton-Boonville. Such rates, referred to hereinafter as approved rates, compare favorably with the proposed rates

from the Illinois groups to the same destinations, with the exception of certain of the rates from the Fulton-Peoria, Danville, and Du Quoin groups.

Subsequently (after discussing and disposing of the exceptional situations referred to in the above) the Commission (R. 189) makes use of the Illinois-Indiana scale and the Midland scale for purpose of comparing the approved rates from the Brazil, Linton and Princeton groups with the approved rates from the Springfield, Fulton-Peoria, Southern Illinois and other Illinois groups; and then says (R. 191):

> Taken as a whole, the combined rates herein approved from Indiana to the 12 northern Illinois destinations average 86.1 percent of the Indiana-Illinois scale and 70.7 percent of the Midland scale and the combined rates herein approved from the Illinois groups to those destinations average 85.4 and 70.3 percent of those scales. We believe that the rates or rate bases above indicated, which are set forth more specifically in appendices A and D hereto, will afford fair and reasonable relations of rates to northern Illinois destinations, both as between the respective origin groups and as between the Indiana groups on the one hand, and the Illinois groups on the other.

Having in mind that the Commission, in showing how it arrived at the approved rates, set out step by step the changes it made in the proposed

rates and that thereafter it took pains to show both as to particular approved rates and as to the combined rates approved that they would afford fair and reasonable relations of rates both as between the respective Indiana groups and as between those groups and the Illinois groups, it seems indisputable that the approved rates were rates which the Commission, acting under section 15 (1) and (7), prescribed for future observance by the carriers. As above said, appellants' bills state in effect that that was what the Commission's order required; and, certainly, in no way other than by establishing the approved rates could the carriers make compliance with the Commission's findings and order.[25]

Moreover, as this Court knows, in cases where the Commission issues a so-called alternative order, simply directing the carriers to remove unjust discrimination found, if does not deal with the question of reasonableness of the rate level. *Texas & Pacific Ry Co. v. United States,* 289 U. S. 627, 633. For such an order leaves to the carriers' election whether to abate the discrimination by raising one rate, lowering the other, or altering both. In contrast, in the present case the

[25] In showing how it arrived at the approved rates from the Indiana groups to Beloit, Wis., the Commission followed the same procedure, that is, it set out step by step the changes it made in the proposed rates and thereafter made use of the Indiana-Illinois scale and the Midland scale for purpose of comparing the approved rates from the Brazil and Linton groups with the rates from the Fulton-Peoria, Springfield and other Illinois groups (R. 192–193).

Commission did deal with the question of reasonableness of rate level. After finding that the rates and rate adjustment before it were unjustly discriminatory and unduly preferential and prejudicial, the Commission determined, or found, that the approved rates will result in a *réasonable,* nondiscriminatory and nonprejudicial adjustment. Finding 19, R. 210; Conclusion 6, R. 212. Even were that fact not otherwise shown, these findings alone establish that the Commission's order was not a mere alternative order for removal of unjust discrimination; that, on the contrary, the Commission, proceeding under section 15 (1), determined and prescribed what would be the reasonable and nondiscriminatory rates to be thereafter observed. *New York* v. *United States,* 331 U. S. 284, 341, 343.

In *New York* v. *United States, supra,* the Commission's order involved was also directed against discriminatory rates and to the establishment, in lieu thereof, of reasonable and nondiscriminatory adjustments. And the appellants in that case, too, contended that the order was beyond the Commission's authority because not affording the carriers alternative methods of removing the discrimination, citing in support *Texas & Pacific Ry. Co.* v. *United States, supra.* In answering this contention, the Court discussed the decision just cited and other decisions bearing on the contention. It is apparent from the briefs of appellants in the

present case that they, like the appellants in *New York* v. *United States, supra,* are laboring under the misconception that there is no distinction between a Commission order made under section 15 (1) and one made under section 3, that is, an alternative order. As shown by the Court's opinion in the *New York case,* there is, of course, a basic distinction between a Commission order made pursuant to its authority under section 15 (1) and an alternative order. For, while in the former case the Commission, after finding that the rates involved are unreasonable, or unjustly discriminatory, determines and prescribes what will be the just and reasonable future rate, in the latter case, after finding that the rates are unjustly discriminatory, it simply orders removal of the discrimination without more. So that it follows that where the order issued is an alternative order, the Commission leaves undetermined and unprescribed the question of what will be the just and reasonable rates to be substituted for those found unlawful and thus leaves such question to the carriers' initiative; and that being so, the carriers must be afforded an "actual alternative", that is, a real opportunity to "abate the discrimination by raising one rate, lowering the other, or altering both." *Texas & Pacific case, supra,* p. 650.

But that all this is inapplicable where the Commission, acting pursuant to section 15 (1),

determines and prescribes what will be the just and reasonable rates, is made entirely plain in *New York* v. *United States, supra,* pp. 341, 342. Nor, in such case, does appellants' further contention have any application, that is, their contention, also based on the *Texas & Pacific case, supra,* that a carrier or group of carriers must effectively participate in both the preferential and prejudicial rates, if an order for the correction of the disparity is to run against it or them. Speaking of the like contention advanced in *New York* v. *United States, supra,* this Court said (p. 342) that it did not need to decide the question whether the carriers there involved effectively controlled the rates within the principle announced in *Central R. R. Co.* v. *United States,* 257 U. S. 247, and the *Texas & Pacific case, supra,* for the reason that that principle

> * * * is applicable only where the Commission is directing the carriers to remove the discrimination. Those cases hold that the Commission may not require carriers to do what they are powerless to perform. But the Court recognized in *Central R. Co.* v. *United States, supra,* p. 257, that where the Commission acts pursuant to section 1 to require carriers to establish, in connection with through routes and joint rates, reasonable rules and regulations, that problem is not involved. For then the Commission corrects the unlawful discrimi-

> natory practice in the case of each carrier by prescribing the just and reasonable rate or practice * * *.

The above holding simply gives recognition to what is plain on the face of the statute. Upon findings of undue preference or prejudice, section 15 (1) empowers the Commission to determine and prescribe what will be the just and reasonable individual or joint rates in such case to be thereafter observed. Where through routes and joint rates already exist, there is no occasion to establish them. Section 15 (1) does not qualify the Commission's power where dealing with joint rates. Presumably Congress knew that cases of undue preference and prejudice confined to individual rates would cover but a minor portion of the field of authority intended to be placed with the Commission.

Moreover, in fact, the Milwaukee does effectively participate in the rates found to be unlawful and has control over these rates. The Milwaukee was under no obligation to participate in the higher joint-line rates, but voluntarily chose to do so. It cannot escape responsibility for unlawfulness thus created by the establishment of a dual basis of rates as a consequence of its own action. Such participation resulted, among other things, in undue preference to shippers and origins on its single line, for which the Milwaukee is clearly responsible. Furthermore,

the Milwaukee cannot seriously contend that it does not control the rates over its own line; hence, in fact, it lies within the Milwaukee's power, by adjusting its own single-line rates to eliminate the existing discriminations. It is only the attitude of the Milwaukee that prevents unanimity among all the carriers themselves.

Appellants contend that the order is invalid because the Commission did not find that the preferential rates were noncompensatory (Milwaukee Br. 19; Ayrshire Br. 56). The same contention was made and answered in *New York* v. *United States, supra,* p. 344, the court pointing out that "The Commission may remove a discrimination effected by rates, even when they are within the zone of reasonableness, if the discrimination is forbidden by section 3 (1)." Moreover, in the present case, having in mind that the I. & S. proceeding and the section 13 intrastate rate proceeding were heard together on a common record (R. 228–230), and that various of the Commission's findings and conclusions relate to both proceedings, it is inescapable that the existing interstate as well as intrastate rates were abnormally low (R. 209).[26] Speaking of

[26] While the rates from Indiana to Beloit, Wisc., were on a somewhat higher level than those to northern Illinois, this was because transportation conditions were somewhat less favorable (R. 192). The Beloit rates were part of the integrated adjustment, and, as such, were held down by the other rates (R. 202).

this, the Commission said (R. 200) that, taken as a whole, and excluding the rates to Chicago which are affected to an unusual degree by competition "this integrated adjustment of Illinois intrastate and Indiana interstate rates to northern Illinois reflects the lowest level of any important track-delivery, coal rate adjustment in the country." And, in its formal finding 17 (R. 209), the Commission found that the carriers were suffering a loss in revenue of not less than $55,000 per annum as a direct result of the low intrastate rates and as an indirect result thereof, were suffering an additional loss in revenue of not less than $50,000 per annum because of the low Indiana interstate rates "held down by the intrastate rates", and that "Under the rate adjustment herein *approved as reasonable and otherwise lawful from Illinois and Indiana to these northern Illinois destinations,* respondents annual revenues may reasonably be expected to be increased by at least the foregoing amounts." [Italics supplied.]

Accordingly, it will be seen that, just as the findings of revenue loss from the low intrastate rates contemplated and supported the increase made in the latter rates to the basis approved in the report, equally the findings of revenue loss from the low Indiana interstate rates contemplated and supported the increase made in those rates to the basis approved in the report. And

this is substantiated by Finding 11 (R. 208) that "the relatively low rates from either the Indiana or Illinois groups can not be increased without at the same time increasing the rates from all of these groups". The Commission's order directly operating on the interstate rates from Indiana was the order in I. & S. No. 5139, but the Commission's findings (Conclusion No. 6, R. 212) made the whole adjustment, intrastate and interstate, approved as reasonable, nondiscriminatory, and nonprejudicial, an inseparably related and integrated adjustment.

Appellants say that the Commission's action here conflicts with the Court's decision in *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, whereas it is apparent that just the opposite is in fact the case. In the decision in question, the Court pointed out (pp. 509–510) that the Commission had "not adjudged the fairness of the relation now subsisting between Illinois and Indiana rates;" that "the whole situation is subject to the power of the Commission", in that the Commission "may fix the fair relation between one line and another, and may build the structure of the rates accordingly". By its decision here under attack, the Commission attempted to do, and did, what this Court plainly indicated by the above language it should do.

CONCLUSION

For the reasons stated, the judgment of the District Court should be affirmed.

PHILIP B. PERLMAN,
Solicitor General.
HERBERT BERGSON,
Assistant Attorney General.
EDWARD DUMBAULD,
Special Assistant to the Attorney General,
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

NOVEMBER 1948.

APPENDIX

Section 2 of the Interstate Commerce Act (Feb. 4, 1887, 24 Stat. 379, 49 U. S. C. 2, as amended, provides as follows:

> That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 3 (1) of the Interstate Commerce Act, as amended, particularly by the Act of September 18, 1940, 54 Stat. 902, provides as follows:

> (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, dis-

trict, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

Section 15 (1) of the Interstate Commerce Act, as amended, provides as follows:

(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to de-

termine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

Section 15 (7) of the Interstate Commerce Act, as amended, provides:

(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pend-

ing such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice,

after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.